

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-6165

To be argued by
Michael B. Mukasey

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANNA SELMA VINJE MORPURGO,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, BOARD OF
HIGHER EDUCATION N.Y.C., MASSACHU-
SETTS INSTITUTE OF TECHNOLOGY,
PRINCETON UNIVERSITY, and RICHARD
KLEINDIENST, WILLIAM SAXBE, EDWARD
H. LEVI, HENRY KISSINGER, MARY MOTHER-
SILL, ALFRED A. GIARDINO, ROBERT J.
KIBBEE, DAVID NEWTON, HAROLD M. PRO-
SHANSKY, HANS J. HILLERBRAND, ARNOLD
KOSLOW, ABRAHAM EDEL, JULIUS ELIAS,
GERALD MYERS, ANDREW J. McLAUGHLIN,
JASON SAUNDERS, VIRGINIA HELD, PETER
CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA
THORNTON, NORMA REES, NAPTHALI LEWIS,
KURT SCHMELLER,

Defendants-Appellees.

On Appeal from the United States District Court for the
Southern District of New York

BRIEF OF APPELLEE MARY MOTHERSILL

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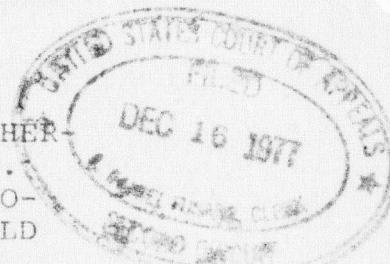


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Defendants-Appellees. :

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BRIEF OF APPELLEE MARY MOTHERSILL

PRELIMINARY STATEMENT

Appellee Mary Mothersill ("Mothersill") submits this brief in opposition to the appeal of Anna Selma Vinje Morpurgo ("Morpurgo") from the opinion and order of the Honorable Edward Weinfeld, United States District Judge, dismissing with prejudice the claims asserted against Mothersill in Morpurgo's Second Amended Complaint. Judge Weinfeld's

opinion is reported at 423 F. Supp. 704.*

COUNTERSTATEMENT OF ISSUE FOR REVIEW
RELATING TO APPELLEE MOTHERSILL

Did Judge Weinfeld err in ruling that the conclusory, unsupported and nebulous allegations contained in Morpurgo's Second Amended Complaint were insufficient as a matter of law to state a claim against Mothersill based on 42 U.S.C.A. § 1985 (1974)?

COUNTERSTATEMENT OF THE CASE

This appeal derives from three pro se actions instituted by Morpurgo in the Southern District of New York and assigned to Judge Weinfeld as related cases.

Morpurgo was formerly employed as an adjunct lecturer at Queensboro Community College by the New York City Board of Higher Education ("BHE"), and enrolled as a doctoral student at the City University of New York. She commenced these actions after BHE failed to renew her employment contract and her graduate studies were terminated. Morpurgo's complaints charge a variety of defendants, ranging from individuals to state and federal agencies, with a multiplicity of wrongful acts. However, her primary claim is that her civil rights have been violated by a massive conspiracy engineered by, among others, the United States, a former Secretary of State and former

* Morpurgo v. United States et al., 75 Civ. 3840 (S.D.N.Y. Nov. 18, 1976) (Appellant's Joint Appendix, Ex. 5).

Attorneys General, to deny her admission into various doctoral programs and her employment at academic institutions or in scientific research projects. See Morpurgo v. United States et al., 423 F. Supp. 704 (S.D.N.Y. 1976) (Appellant's Joint Appendix, Ex. 5).

Mothersill was and is Chairperson of the American Philosophical Association's Committee on the Status of Women in the Profession. In the Second Amended Complaint (Appellant's Joint Appendix, Ex. 2), Morpurgo has alleged that Mothersill participated in the conspiracy by suppressing evidence of it uncovered in the course of Mothersill's investigation of Morpurgo's grievance against BHE. Morpurgo does not assert that Mothersill's participation was necessarily willful; rather, it is alleged that BHE and unspecified federal agencies prevented Mothersill from conducting a full investigation and revealing the facts.

Mothersill is encompassed in the reference to "all the individual defendants" in one paragraph of the Second Amended Complaint (§ 20), and specifically named in five others, (§§ 30, 42, 43, 44 and 46). Paragraph 20 charges the "individual defendants" with withholding, from an unspecified forum, unspecified evidence of unspecified "counter-intelligence activity" by unspecified persons. No joint conduct is alleged; indeed, there is the suggestion that it is only similar -- not joint -- behavior by the individual

defendants that results in the alleged conspiracy. To quote from paragraph 20: by "withholding evidence", the defendants "are thus acting in conspiracy with federal agencies. . . ." (emphasis added). "Withholding evidence" by itself is hopelessly vague as a statement of an actionable wrong.

Paragraph 30 charges Mothersill by name with "withholding evidence," again from an unspecified forum. The conspiracy alleged in paragraph 30 is to interfere with Morpurgo's civil rights in education and employment but such conspiracy is not further described. Again, it is suggested that Mothersill is a "conspirator" simply on the basis of her own conduct, with no actual relationship to the alleged conduct of other defendants. To quote the plaintiff's language: by "withholding evidence", Mothersill "is thus a party in a conspiracy. . . ." (emphasis added).

In Paragraphs 42, 43 and 44, Morpurgo appears to allege that unspecified federal agencies and the Board of Higher Education prevented Mothersill from investigating and revealing to Morpurgo facts relating to Morpurgo's "loss of matriculation" at the City University of New York. To the extent one can fathom these claims at all, they suggest that Mothersill was herself a victim of the alleged conspiracy rather than a participant in it.

Finally, Paragraph 46, like paragraphs 20 and 30,

is vague, conclusory, and contains no reference to joint action.

Taking the allegations in the Second Amended Complaint with respect to Mothersill as a whole, they appear to suggest that she chaired a committee of the American Philosophical Association, perceived by the plaintiff as having the authority and responsibility (also unspecified) to investigate certain of the plaintiff's allegations, and that Mothersill did not pursue the investigation, was prevented from doing so or did so with a result that the plaintiff finds unsatisfactory.

Based on the obvious inadequacy of these allegations, Mothersill moved to dismiss the claims against her for failure to state a cause of action upon which relief could be granted. (Record on Appeal, Document nos. 44-46). Having allowed Morpurgo two opportunities to amend her complaint, Judge Weinfeld granted Mothersill's motion to dismiss. Morpurgo now seeks to have this ruling reversed.

ARGUMENT

Morpurgo's claims against Mothersill are utterly insufficient. This is apparent from Morpurgo's own statement in respect to such claims in his brief to this Court. That statement reads, in its entirety, as follows:

Appellant's pleadings and the evidence submitted in support thereof are sufficient

basis for warranting a court in finding that a claim under which relief can be granted exists as to Appellee MOTHERSILL, either as intimidated material witness or willing co-conspirator with the "BHE Defendants" in suppressing information of a conspiracy to interfere with Appellant's civil rights in education and employment, in violation of 42 U.S.C. 1985, et seq.* The Court should note that Appellant made every effort to eliminate Professor Mothersill from the list of Defendants by offering her opportunity to voluntarily depose [sic] in exchange for immunity from prosecution, regardless of the content of her testimony, and this offer was not accepted . . . (Appellant's Brief at 20).

Drawing the worst inferences against Mothersill from this recitation, Morpurgo's claim must be that Mothersill, as a willing conspirator, voluntarily suppressed evidence of the conspiracy in furtherance of the conspiracy. This allegation fails to state a claim upon which relief can be granted. As Judge Weinfeld noted, this Court has held consistently that vague and conclusory allegations will not support a conspiracy claim based on the Civil Rights Act; rather, a complaint must contain factual allegations that give rise to a reasonable inference of a conspiracy and demonstrate with some degree of particularity that each defendant engaged in some overt act reasonably related to the promotion of the conspiracy. Powell v. Workmen's Compensation Bd., 327 F.2d 131, 137 (2d Cir. 1964), Koch v. Yunich, 533 F.2d 80, 85 (2d Cir. 1976); Fine v. City of New York,

* Although Morpurgo alleged below that Mothersill's conduct was in violation of Title VI and IX of the Federal Higher Education Act, 20 U.S.C.A. §§ 1121-32, 1134-34s (1977), as well as the Civil Rights Act, her appeal is based solely on the latter statute.

529 F.2d 70, 74 (2d Cir. 1975); Powell v. Jarvis, 460 F.2d 551, 553 (2d Cir. 1972). In this case, even though Morpurgo was permitted to amend her complaint on two separate occasions, there are no facts alleged from which it can reasonably be inferred that Mothersill acted in concert with any other person in violation of Morpurgo's civil rights, that she committed any overt act in furtherance of a conspiracy, or even that a conspiracy, whether or not involving Mothersill, ever existed. Furthermore, there are no allegations which, as required by a claim based on 42 U.S.C.A. § 1985 (1974), indicate that Mothersill's acts amount to an intentional and purposeful deprivation of Morpurgo's constitutional rights. Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); see Kletschka v. Driver, 411 F.2d 436, 447 (2d Cir. 1969); Bergman v. Stein, 404 F. Supp. 287, 294 (S.D.N.Y. 1975).

Accordingly, in light of the wholly conclusory nature of Morpurgo's allegations, Judge Weinfeld's ruling dismissing the claims asserted against Mothersill in the Second Amended Complaint for failing to state a claim was both fair and correct. To require Mothersill to defend against such nebulous allegations would be an unfair and unwarranted burden. Powell v. Workman's Compensation Bd., supra.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the decision and order of the District Court dismissing with prejudice all of Morpurgo's claims against Mothersill be affirmed.

Dated: New York, New York
December 16, 1977

Respectfully submitted,

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EDWARD H. LEVI, HENRY KISSINGER, MARY :
MOTHERSILL, ALFRED A. GIARDINO, ROBERT J. :
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GREWE, C.S. HONG, ROBERTA THORNTON, NORMA :
REES, NAPTHALI LEWIS, KURT SCHMELLER, :

Defendants-Appellees. :

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AFFIDAVIT OF
SERVICE BY MAIL

Docket No. 77-6165

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Theodore B. Van Itallie, Jr., being duly sworn,
deposes and says:

1. I am over 18 years of age, not a party to this
action and reside at 57 West 69th Street, New York, N.Y. 10023.

2. On the 16th day of December, 1977, I served two
copies of the attached Brief of Appellee Mary Mothersill upon the
plaintiff-appellant and the following attorneys for the defendants-
appellees who have appeared herein by depositing two true and

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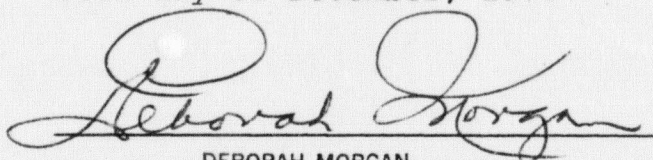
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Sworn to before me this

16th day of December, 1977



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Notary Public, State of New York
No. 03-4643753
Qualified in Bronx County
Commission Expires March 30, 1979